

the General Counsel or, where appropriate, the Deputy Executive Director, shall issue a decision in writing granting or denying the appeal in whole or in part. To the extent that the appeal is granted, the General Counsel or, where appropriate, the Deputy Executive Director, shall cause the requested amendment to be made promptly. To the extent that the appeal is denied, the decision shall include the reasons for the denial and a notice of the requester's right to submit a brief statement setting forth reasons for disputing the denial of appeal, to seek judicial review of the denial pursuant to 5 U.S.C. 552a(g)(1)(A), and to obtain further information concerning the provisions for judicial review under that section.

(c) An individual whose appeal has been denied in whole or in part may submit a brief summary statement setting forth reasons for disputing such denial. Such statement shall be submitted within 30 days of receipt of the denial of the appeal to the Disclosure Officer. Any such statement shall be made available by the PBGC to anyone to whom the record is subsequently furnished and may also be accompanied, at the discretion of the PBGC, by a brief statement summarizing the PBGC's reasons for refusing to amend the record. The PBGC shall also provide copies of the individual's statement of dispute to all prior recipients of the record with respect to whom an accounting of the disclosure of the record was maintained pursuant to 5 U.S.C. 552a(c)(1).

(d) To request further information concerning the provisions for judicial review, an individual shall submit such request in writing to the Deputy General Counsel, who shall respond to such request as promptly as possible.

§ 4902.8 Fees.

When an individual requests a copy of his or her record under § 4902.4, charges for the copying shall be made according to the following fee schedule:

(a) *Standard copying fee.* There shall be a charge of \$0.15 per page of record copies furnished. Where the copying fee is less than \$1.50, it shall not be assessed.

(b) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of \$50, the individual desiring reproduction may request a special rate quotation from the PBGC.

(c) *Manual copying by requester.* No charge will be made for manual copying by the requester of any document made available for inspection under § 4902.4. The PBGC shall provide facilities for such copying without charge between the hours of 9 a.m. and 4 p.m. on any working day.

§ 4902.9 Specific exemptions.

(a) Under the authority granted by 5 U.S.C. 552a(k)(5), the PBGC hereby exempts the system of records entitled "Personnel Security Investigation Records—PBGC" from the provisions of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f), to the extent that the disclosure of such material would reveal the identity of a source who furnished information to PBGC under an express promise of confidentiality or, before September 27, 1975, under an implied promise of confidentiality.

(b) The reasons for asserting this exemption are to insure the gaining of information essential to determining suitability and fitness for PBGC employment, access to information, and security clearances, to insure that full and candid disclosures are obtained in making such determinations, to prevent subjects of such determinations from thwarting the completion of such determinations, and to avoid revealing the identities of persons who furnish information to the PBGC in confidence.

PART 4903—DEBT COLLECTION

Subpart A—General

Sec.

4903.1 Purpose and scope.

4903.2 General.

4903.3 Definitions.

Subpart B—Administrative Offset

4903.21 Application of Federal Claims Collection Standards.

4903.22 Administrative offset procedures.

4903.23 PBGC requests for offset by other agencies.

Pension Benefit Guaranty Corporation

§ 4903.3

4903.24 Requests for offset from other agencies.

Subpart C—Tax Refund Offset

4903.31 Eligibility of debt for tax refund offset.

4903.32 Tax refund offset procedures.

4903.33 Referral of debt for tax refund offset.

Subpart D—Salary Offset [Reserved]

AUTHORITY: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402—6.

SOURCE: 61 FR 34130, July 1, 1996, unless otherwise noted.

Subpart A—General

§ 4903.1 Purpose and scope.

(a) *Subpart A.* Subpart A of this part contains definitions and general provisions applicable to debt collection generally.

(b) *Subpart B.* Subpart B of this part prescribes procedures for debt collection by administrative offset, as authorized by the Federal Claims Collection Act (31 U.S.C. 3716), and consistent with applicable provisions of the Federal Claims Collection Standards. These procedures apply when the PBGC determines that collection by administrative offset of a claim that is liquidated or certain in amount is feasible and not otherwise prohibited or when another agency seeks administrative offset against a payment to be made by the PBGC.

(c) *Subpart C.* Subpart C of this part prescribes procedures for debt collection by tax refund offset, as authorized by section 3720A of subchapter II, chapter 37 of title 31 of the United States Code (31 U.S.C. 3720A) and in accordance with applicable IRS regulations (26 CFR 301-6402.6), including a related procedure for disclosure to a consumer reporting agency. These procedures apply to determinations that a debt of at least \$25 is past-due and legally enforceable, to referrals by the PBGC of past-due, legally enforceable debts to the IRS for offset, and to any subsequent corrections of information contained in such referrals.

§ 4903.2 General.

(a) Certain PBGC efforts to obtain payment of debts arising out of activities under ERISA are authorized by and subject to requirements prescribed under other federal statutes. When, and to the extent, such requirements apply to collection of a debt by the PBGC, PBGC activities will be consistent with such requirements, as well as with any other applicable requirements (see, e.g., parts 4003, 4007, and 4062 of this chapter).

(b)(1) The Executive Director of the PBGC has delegated to the Director of the Financial Operations Department primary responsibility for PBGC debt collection activities. This delegation includes responsibility for procedures implementing requirements prescribed under federal statutes other than ERISA, and for coordinating the activities of other PBGC departments with functional responsibilities for different types of claims.

(2) PBGC departments are responsible for ascertaining indebtedness and other aspects of agency collection activities within their areas of functional responsibility.

§ 4903.3 Definitions.

The following terms are defined in § 4001.2 of this chapter: IRS, PBGC, and person. In addition, for purposes of this part:

Administrative offset has the meaning set forth in 31 U.S.C. 3701(a)(1).

Agency means an executive or legislative agency (within the meaning of 31 U.S.C. 3701(a)(4)).

Claim and debt, as defined in the Federal Claims Collection Standards (4 CFR 101.2(a)), are used synonymously and interchangeably to refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Consumer reporting agency has the meaning set forth in 31 U.S.C. 3701(a)(3).

Federal Claims Collection Act means the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

Federal Claims Collection Standards means 4 CFR parts 101 through 105,

which are regulations issued jointly by the Comptroller General of the United States and the Attorney General of the United States that implement the Federal Claims Collection Act.

Repayment agreement means a written agreement by a debtor to repay a debt to the PBGC.

Tax refund offset means the reduction by the IRS of a tax overpayment payable to a taxpayer by the amount of past-due, legally enforceable debt owed by that taxpayer to a federal agency that has entered into an agreement with the IRS with regard to its participation in the tax refund offset program, pursuant to IRS regulations (26 CFR 301.6402–6).

Subpart B—Administrative Offset

§ 4903.21 Application of Federal Claims Collection Standards.

The PBGC will determine the feasibility of collection by administrative offset, whether to accept a repayment agreement in lieu of offset, and how to apply amounts collected by administrative offset on multiple debts as provided in the Federal Claims Collection Standards (4 CFR 102.3).

(a) *Feasibility.* The PBGC will determine whether collection by administrative offset is feasible on a case-by-case basis in the exercise of sound discretion. In making such determinations, the PBGC will consider:

- (1) Whether administrative offset can be accomplished, both practically and legally;
- (2) Whether administrative offset is best suited to further and protect all governmental interests;
- (3) In appropriate circumstances, the debtor's financial condition; and
- (4) Whether offset would tend to interfere substantially with or defeat the purposes of the program authorizing the payments against which offset is contemplated.

(b) *Repayment agreements.* The PBGC will exercise its discretion in determining whether to accept a repayment agreement in lieu of offset, balancing the Government's interest in collecting the debt against fairness to the debtor. If the debt is delinquent (within the meaning of 4 CFR 101.2(b)) and the debtor has not disputed its existence or

amount, the PBGC will accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(c) *Multiple debts.* When the PBGC collects multiple debts by administrative offset, it will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

§ 4903.22 Administrative offset procedures.

(a) *General.* Except as otherwise required by law or as provided in paragraph (e) of this section, the PBGC will not effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures specified in paragraphs (b) and (c) of this section. However, the PBGC will not duplicate any notice or other procedural protection it previously provided in connection with the same debt under some other statutory or regulatory authority, such as part 4003 of this chapter.

(b) *Notice.* The PBGC will provide written notice informing the debtor of the following:

- (1) The nature and amount of the debt, and the PBGC's intention to collect by offset;
- (2) That the debtor may inspect and copy PBGC records pertaining to the debt in accordance with part 4901 or part 4902 of this chapter, as applicable (access under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a), respectively);
- (3) How and from whom the debtor may obtain administrative review of a determination of indebtedness;
- (4) The facts and circumstances that the PBGC will consider in determining whether to accept a repayment agreement in lieu of offset; and
- (5) If the PBGC has not previously demanded payment of the debt, the date by which payment must be made to avoid further collection action.

(c) *Administrative review.* (1) A debtor may obtain review within the PBGC of a determination of indebtedness by

submitting a written request for review, designated as such, to the PBGC official specified in the notice of indebtedness. Unless another regulation in this chapter specifies a different period of time, such a request must be submitted within 30 days after the date of a PBGC notice under paragraph (b) of this section.

(2) A request for review must:

(i) State the ground(s) on which the debtor disputes the debt; and

(ii) Reference all pertinent information already in the possession of the PBGC and include any additional information believed to be relevant.

(3) The PBGC will review a determination of indebtedness, when requested to do so in a timely manner. The PBGC will issue a written decision, based on the written record, and will notify the debtor of its decision.

(i) The review will be conducted by an official of at least the same level of authority as the person who made the determination of indebtedness.

(ii) The notice of the PBGC's decision on review will include a brief statement of the reason(s) why the determination of indebtedness has or has not been changed.

(4) Upon receipt of a request for administrative review, the PBGC may, in its discretion, temporarily suspend transactions in any of the debtor's accounts maintained by the PBGC. If the PBGC resolves the dispute in the debtor's favor, it will lift the suspension immediately.

(d) *Repayment agreement in lieu of offset.* (1) The PBGC will not consider entering a repayment agreement in lieu of offset unless a debtor submits a copy of the debtor's most recent audited (or if not available, unaudited) financial statement (with balance sheets, income statements, and statements of changes in financial position), to the extent such documents have been prepared, and other information regarding the debtor's financial condition (e.g., the types of information on assets, liabilities, earnings, and other factors specified in paragraphs (b)(3) through (b)(7) of § 4062.6 of this chapter).

(2) The PBGC may require appropriate security as a condition of accepting a repayment agreement in lieu of offset.

(e) *Exception.* (1) The PBGC may effect administrative offset against a payment to be made to the debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section if:

(i) Failure to take the offset would substantially prejudice the government's ability to collect the debt; and

(ii) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(2) The PBGC has determined that a case in which it applies the special rule in § 4068.3(c) of this chapter meets the criteria in paragraph (e)(1) of this section.

(3) If the PBGC effects administrative offset against a payment to be made to a debtor prior to completing the procedures specified in paragraphs (b) and (c) of this section, the PBGC—

(i) Will promptly complete those procedures; and

(ii) Will promptly refund any amounts recovered by offset but later found not to be owed to the Government.

§ 4903.23 PBGC requests for offset by other agencies.

(a) *General.* The PBGC may request that funds payable to its debtor by another agency be administratively offset to collect a debt owed to the PBGC by the debtor. A PBGC request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund will be made in accordance with 5 CFR part 831, subpart R (Agency Requests to OPM for Recovery of a Debt from the Civil Service Retirement and Disability Fund).

(b) *Certification.* In requesting administrative offset, the Director of the Financial Operations Department (or a department official designated by the Director) will certify in writing to the agency holding funds of the debtor—

(1) That the debtor owes the debt (including the amount) and that the PBGC has fully complied with the provisions of 4 CFR 102.3; and

(2) In a request for administrative offset against amounts due and payable from the Civil Service Retirement and Disability Fund, that the PBGC has complied with applicable statutes and

the regulations and procedures of the Office of Personnel Management.

§ 4903.24 Requests for offset from other agencies.

(a) *General.* As provided in the Federal Claims Collections Standards (4 CFR 102.3(d)), the PBGC generally will comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States unless the requesting agency has not complied with the applicable provisions of the Federal Claims Collection Standards or the offset would be otherwise contrary to law.

(b) *Submission of requests.* (1) Any agency may request that funds payable to its debtor by the PBGC be administratively offset to collect a debt owed to such agency by the debtor by submitting the certification described in paragraph (c) of this section.

(2) All such requests should be directed to the Director, Financial Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

(c) *Certification required.* The PBGC will not initiate administrative offset in response to a request from another agency until it receives written certification from the requesting agency, signed by an appropriate agency official, that the debtor owes the debt (including the amount) and that the requesting agency has fully complied with the provisions of 4 CFR 102.3 (with a citation to the agency's own administrative offset regulations).

Subpart C—Tax Refund Offset

§ 4903.31 Eligibility of debt for tax refund offset.

The PBGC will determine whether a debt is eligible for tax refund offset in accordance with IRS regulations (26 CFR 301.6402–6 (c) and (d)). The PBGC may refer a past-due, legally enforceable debt to the IRS for offset if:

(a) The debt is a judgment debt, or the PBGC's right of action accrued not more than 10 years earlier (unless the debt is specifically exempt from this requirement);

(b) The PBGC cannot currently collect the debt by salary offset (pursuant to 5 U.S.C. 5514(a)(1));

(c) The debt is ineligible for administrative offset (by reason of 31 U.S.C. 3716(c)(2)), or the PBGC cannot currently collect the debt by administrative offset (under 31 U.S.C. 3716 and subpart B of this part) against amounts payable by the debtor to the PBGC;

(d) The PBGC has notified, or attempted to notify, the debtor of its intent to refer the debt, given the debtor an opportunity to present evidence that all or part of the debt is not past-due or not legally enforceable, considered any evidence presented by the debtor in accordance with § 4903.32, and determined that the debt is past-due and legally enforceable;

(e) If the debt is a consumer debt and exceeds \$100, the PBGC has disclosed the debt to a consumer reporting agency (as authorized by 31 U.S.C. 3711(f) and provided in § 4903.32), unless a consumer reporting agency would be prohibited from reporting information concerning the debt (by reason of 15 U.S.C. 1681c); and

(f) The debt is at least \$25.

§ 4903.32 Tax refund offset procedures.

(a) *General.* Before referring a debt for tax refund offset, the PBGC will complete the procedures specified in paragraph (b) and, if applicable, paragraph (c) of this section. The PBGC may satisfy these requirements in conjunction with any other procedures that apply to the same debt, such as those prescribed in § 4903.22 or part 4003 of this chapter.

(b) *Notice, opportunity to present evidence, and determination of indebtedness.*

(1) The PBGC will notify, or make a reasonable attempt to notify, a person owing a debt (a "debtor") that a debt is past-due and if not repaid within 60 days, the PBGC will refer the debt to the IRS for offset against any overpayment of tax. For this purpose, compliance with IRS procedures (26 CFR 301.6402–6(d)(1)) constitutes a reasonable attempt to notify a debtor.

(2) A debtor will have at least 60 days to present evidence, for consideration by the PBGC, that all or part of a debt is not past-due or not legally enforceable.

(3) If evidence that all or part of a debt is not past-due or not legally enforceable is considered by an agent or

Pension Benefit Guaranty Corporation

§ 4904.1

person other than a PBGC employee acting on behalf of the PBGC, a debtor will have at least 30 days from the date of the determination on the debt to request review by the Director of the Financial Operations Department (or a department official designated by the Director).

(4) The PBGC will notify a debtor of its determination as to whether all or part of a debt is past-due and legally enforceable.

(c) *Consumer reporting agency disclosure.* (1)(i) If a consumer debt exceeds \$100, the Director of the Financial Operations Department (or a department official designated by the Director), after verifying the validity and overdue status of the debt and that section 605 of the Consumer Credit Protection Act (15 U.S.C. 1681c) does not prohibit a consumer reporting agency from reporting information concerning the debt because it is obsolete, will send the individual who owes the debt a written notice—

(A) That the debt is past-due;

(B) That the PBGC intends to disclose to a consumer reporting agency that the individual is responsible for the debt and the specific information to be disclosed; and

(C) How the individual may obtain an explanation of the debt, dispute the information in PBGC's records, and obtain administrative review of the debt.

(ii) If the PBGC does not have a current address for an individual, the Director of the Financial Operations Department (or a department official designated by the Director) will take reasonable action to locate the individual.

(2) The Director of the Financial Operations Department (or a department official designated by the Director) will disclose the debt if, within 60 days (or, at his or her discretion, more than 60 days) after sending the notice described in paragraph (c)(1) of this section, the individual has not repaid the debt, or agreed to repay the debt under a written agreement, or requested administrative review of the debt.

§ 4903.33 Referral of debt for tax refund offset.

The Director of the Financial Operations Department (or a department official designated by the Director) will

refer debts to the IRS for refund offset, and will correct referrals, in accordance with IRS regulations (26 CFR 301.6402-6(e) and (f)).

Subpart D—Salary Offset [Reserved]

PART 4904—ETHICAL CONDUCT OF EMPLOYEES

AUTHORITY: 29 U.S.C. 1302(b); E.O. 11222, 30 FR 6469; 5 CFR 735.104.

§ 4904.1 Outside employment and other activity.

(a)–(c) [Reserved]

(d) An employee who is engaged in or is planning to engage in outside employment, business, professional or other such activities for pay shall obtain clearance:

(1) When such activities raise a question of conflict with this subpart or any applicable laws, orders, regulations or standards, or

(2) When applicable laws, orders or regulations require clearance of such activities.

(e) A request for clearance shall be in writing and shall include a statement of the nature of and the amount of time to be devoted to the activity. The heads of offices shall receive and review requests for clearance submitted by members of their staff. The Executive Director or his designee shall receive and review requests for clearance submitted by the heads of offices and special Government employees. The employee reviewing the request for clearance may require the employee making the request to furnish such other information as may be appropriate in considering the request and shall consult with the Corporation's Ethics Counselor where appropriate. The request may be granted only if such activity would be consistent with applicable laws, orders and regulations. If the request for clearance is not granted, the employee making the request shall not commence or continue in the activity unless the Executive Director or his designee, upon written request of the employee, determines that